IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 929 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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RJAUBHAI KALABHAI VAGHARI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR YOGESH S LAKHANI for Appellant(s) : 1,
MR ND GOHIL ADDITIONAL PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 14/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE BANKIM N. MEHTA)

1. The appellant – original accused No.1 – Rajubhai Kalabhai Vaghari has preferred this appeal under Section – 374(2) of Code of Criminal Procedure, 1973 and challenged the judgment dated 14th August 1997 passed by Additional Sessions Judge, Junagadh in Sessions Case No.143 of 1995 convicting the appellant for the offences punishable under Section 302 and 498 (A) of Indian Penal Code and sentencing him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment of one year.

2. In brief, the prosecution case was that before about one and half year of the incident, complainant deceased Manjulaben, daughter of Badhubhai Ramjibhai was married to appellant – accused No.1 – Rajubhai Kalabhai Vaghari and they had a son aged about three months out of the said marriage. Appellant – accused – Rajubhai Kalabhai Vaghari had five children out of his previous marriage and all of them resided together. Original accused No.2 Diwaliben Alias Devuben, wife of Kalabhai, was the mother of appellant – Rajubhai Kalabhai Vaghari. On 11/03/1995 the appellant – original accused No.1 inflicted physical and mental cruelty to complainant Manjulaben by beating with stick, therefore, she went to her parental house. On 12/03/1995, appellant – accused No.1 with relatives went to the parental house of Manjulaben and persuaded her to come to his house. Therefore, Manjulaben came to

appellants' house at Kamdar Society at Junagadh. Thereafter, on the same night, at 10:00 p.m., when Manjulaben was preparing meal, the appellant poured kerosene over Manjulaben from stove, ignited matchstick and thereby tried to kill Manjulaben. She was taken to the hospital for treatment. The hospital authority reported the incident to the police, who came to the hospital and recorded the F.I.R. Manjulaben succumbed to the injuries in the hospital.

3. On the basis of complaint filed by Manjulaben, wife of Rajubhai Kalabhai Vaghari before Junagadh city police station, the offence was registered as I CR No.105/95 for the offences punishable under Sections 307, 498 (A) and 114 of Indian Penal Code and investigation was started. During the course of investigation, the complainant died and therefore, Section 302 of Indian Penal Code was added to the complaint. During the course of investigation, statements of witnesses were recorded. Panchnama of scene of offence, inquest panchnama and panchnama of muddamal were drawn. The dead body of Manjulaben was sent for postmortem. The muddamal was sent to F.S.L. for examination. The appellant and his mother original accused No.2 - Diwaliben alias Devuben, wife of Kalabhai were arrested. On completion of investigation, charge sheet was laid before the Chief Judicial Magistrate, Junagadh for offences punishable under Sections 302, 498

(A) and 114 of Indian Penal Code. As the offence was triable by the Sessions Court, the case was committed to the Sessions Court at Junagadh and it was registered as Sessions Case No.143 of 1995. Learned Additional Sessions Judge, Junagadh framed charge Exhibit 1 against the accused for offences punishable under Sections 302, 498 (A) and 114 of Indian Penal Code. The charge was read over and explained to the accused, who pleaded no guilty to the charge and claimed to be tried. Therefore, the prosecution adduced evidence to prove the charge levelled against the accused. On completion of recording of the evidence, learned trial judge explained the circumstances appearing against them in the evidence. The appellant – accused in his further statement recorded under Section 313 of Code of Criminal Procedure explained the circumstances by denying having committed the offence and explained that his wife Manjulaben sustained accidental burn injuries by stove and he had also sustained burn injuries as he tried to rescue her, that Manjulaben has filed false complaint on instigation by her relatives. After hearing learned A.P.P. and learned advocate for the accused, the learned trial judge found appellant – accused No.1 – Rajubhai Kalabhai Vaghari guilty for offences punishable under Sections 302, 498 (A) of Indian Penal Code and sentenced him as mentioned hereinabove. The learned trial judge acquitted accused No.2 – Diwaliben alias Devuben, wife of Kalabhai Vaghari for

the offence charged against her. Therefore, the appellant – convict has preferred this appeal.

4. We have heard learned advocate Mr. Lakhani for the appellant and learned A.P.P. Mr. N.D. Gohil at length and we have also perused the judgment and record and proceedings of the case.

5. Learned advocate for the appellant submitted that the case is solely based on the dying declaration, but looking to the injuries sustained by the injured, it is difficult to believe that she was in fit state of mind to give statement and therefore, dying declaration can not be relied upon to connect the appellant with the offence. He further submitted that the appellant had also sustained burn injuries as he tried to save the deceased, therefore, the death was accidental and not homicidal in nature. He also submitted that there is no other independent evidence to implicate the appellant and on the instigation of the relatives of the deceased, false case is filed against the appellant. He also submitted that there is no direct evidence to connect the appellant with the offence and therefore, the trial court erred in convicting the appellant and therefore, the appeal is required to be allowed and judgment is required to be set aside.

6. Learned A.P.P. Mr. Gohil opposed the appeal and submitted that the dying declaration was recorded immediately after the incident by the Executive Magistrate and it is indicated that the declarant was in fit state of mind to give statement and therefore, learned trail Judge is justified in relying on the dying declaration. He further submitted that the medical evidence also indicates that the death was homicidal in nature. The defence has not been able to demonstrate that the it was an accident, therefore, no interference is warranted in the impugned judgment and appeal is required to be dismissed.

7. In order to prove that the death of Manjulaben was homicidal, the prosecution examined P.W. 11 – Dr. Chetan Biharilal Jani at Exh.47, who performed postmortem of Manjulaben. The witness in his deposition deposed about the external and internal injuries found on the dead body of Manjulaben. According to the Doctor, cause of death was septicaemia on account of burns. The witness had prepared postmortem report Exhibit – 51. The main defence of the appellant is that the deceased Manjulaben sustained burn injuries on account of accident, however, the defence has not been able to elicit from cross-examination of witness that the

injuries were possible on account of accident.

8. The prosecution produced inquest panchnama at Exhibit 39. The panchnama indicates that Manjulaben had sustained severe burn injuries.

9. In view of the evidence, it becomes clear that the deceased died on account of severe burn injuries received by her. The defence has not been able to demonstrate that the injuries were accidental, therefore, in our view, the prosecution proved beyond reasonable doubt that Manjulaben died homicidal death.

10. The next point urged by the learned advocate for the appellant is in respect of dying declaration. In order to prove that the deceased gave account of circumstances leading to fatal injuries by making dying declaration, the prosecution examined the Executive Magistrate P.W.-2 – Dilsukhray Karshanbhai Madhukiya at Exhibit 22, who recorded dying declaration. The witness in his deposition stated that on 12/03/1995 at about 2:15 at night, he received yadi Exhibit 23 from Junagadh Police Station to record dying declaration and therefore, he went to

the hospital and met Dr. Dadhaniya, who took him to burns ward of the hospital. He further deposed that he inquired from Dr. Dadhaniya as to whether Manjulaben was fully conscious to give dying declaration, to which Dr. Dadhaniya informed him that she was fully conscious to give dying declaration and such endorsement of the Doctor was obtained in the margin of dying declaration Exhibit 24. The witness further deposed that thereafter he started recording dying declaration by putting questions to Manjulaben and recording replies given by her. He deposed that the dying declaration was read over and left thumb impression of Manjulaben was obtained on dying declaration as right thumb was burnt. He also deposed that thereafter he obtained endorsement of the Doctor, who was present there. The witness further deposed that while recording dying declaration except the Doctor and Manjulaben, none was present. In cross-examination, the witness denied that left thumb of Manjulaben was not burnt and she was making complaints of pain, while her statement was being recorded. Except that, there is no cross-examination with regard to the declaration made by the deceased.

11. The prosecution produced yadi at Exhibit 23

given by Junagadh Police Station to the Executive Magistrate to record dying declaration. The endorsement made by the Executive Magistrate thereon indicates that it was received at 2:15 on 13-03-1995 (early in the morning). The dying declaration Exhibit 24 indicates that the Executive Magistrate immediately on receipt of yadi Exhibit 23, went to the hospital and recorded the dying declaration between 2:30 a.m. and 2:55 a.m.

12. The prosecution also examined P.W.-1 – Dr. Dineshkumar Mohanlal Dadhaniya at Exhibit 15, who initially treated the deceased and made endorsement about the state of health on dying declaration Exhibit 24. It appears from his evidence that Manjulaben was brought to the hospital on account of burn injury at 11:55 p.m. on 12/03/1995 by Savitaben Ravjibhai for treatment. The witness deposed that Manjulaben had 90 degree burns and had issued certificate Exhibit 17. The evidence indicates that the appellant was also brought to the hospital at 11:55 p.m. on the same day and the appellant had declared that he sustained burn injuries by accident. The evidence indicates that Manjulaben was conscious when she was brought to the hospital and the witness

had made endorsement on dying declaration Exhibit 24 with regard to consciousness of Manjulaben. There is no cross-examination with regard to the state of health of Manjulaben, which would indicate that she was not in a fit state of her health at the time of recording her dying declaration. It also appears from the evidence of this witness that the declarant was physically and mentally competent to give her statement and was oriented.

13. The prosecution produced dying declaration of Manjulaben at Exhibit 24. It indicates that the Executive Magistrate recorded the same in form of questions and answers. The endorsement made thereon by Doctor at 2:30 a.m. indicates that the patient was conscious. The endorsement by the Doctor at the end of dying declaration at 2:56 a.m. also indicates that the patient was conscious throughout recording of dying declaration. The dying declaration narrates the chain of events that took place on the day of incident. It indicates that the deceased had quarrel with appellant prior to the incident and therefore, she went to her parental house. Thereafter, on 12/03/1995, the appellant came to the parental house of Manjulaben with caste fellows, settled the dispute

and persuaded Manjulaben to go to his house, so Manjulaben left her matrimonial house and came to the appellant's house. Thereafter, in the evening, when Manjulaben was preparing meal, the appellant picked up quarrel with her, poured kerosene over her and set her on fire by lighting matchstick. It also appears from the declaration that the declarant made a request to the police to provide protection to her parents after her death as she apprehended that the appellant would harass them. The medical evidence Exhibit 17 indicates that Manjulaben was admitted in the hospital at 11:55 p.m. with burn injuries and she had first and second degree burns all over body except lower parts of both legs and sole of foot. She had 90% burns.

14. The prosecution produced treatment papers of Manjulaben at Exhibit 18. The case papers indicate that she was admitted in the hospital at 11:55 p.m. on 12/03/1995. The case papers do not indicate that the declarant was not in fit state of mind to give her statement. On overall re-appreciating of evidence, it becomes clear that immediately after the incident Manjulaben was taken to the hospital for treatment. The hospital authority informed the police, who recorded the F.I.R. and services of

Executive Magistrate were requisitioned and immediately the dying declaration was recorded . All this was completed between 11:55 p.m. on 12/03/1995 and 2:55 a.m. on 13/03/1995. There is no unnecessary delay in recording of dying declaration. The dying declaration gives details of the incident. It is coherent and consistent. The defence has not been able to demonstrate that the declarant was not in fit state of mind to give true account of her injuries. Therefore also, in our view, the learned trial Judge was justified in relying on the dying declaration to convict the appellant.

15. The prosecution produced the complaint given by Manjulaben at Exhibit 45. In the said complaint, she has narrated the incident in detail. The prosecution examined P.W.-10 – Ramjibhai Jivabhai at Exhibit 44, who recorded the complaint Exhibit 45. The witness is cross-examined with regard to the ability of the complainant to give details of the incident. However, the defence has not been able to elicit that the complainant was not in fit state of mind to give details of the incident.

16. The prosecution also examined Investigating

Officer P.W.-12 – Dhananjaykumar Rajnikant Buch at Exhibit 52, who carried out the investigation. The defence has not been able to elicit that no proper investigation has been carried out. The prosecution produced panchnama of scene of offence at Exhibit 34. Panchas have turned hostile and not supported the prosecution case, but the panchnama has been duly proved through P.W.-12 – Dhananjaykumar Rajnikant Buch Exhibit 52. It appears from the panchnama that there were marks of fire in the house and burnt cloth pieces were found from the house. It also indicates that matchbox with kerosene stove were recovered from the scene of offence. In view of this evidence, it becomes clear that the deceased sustained burn injuries and it does not indicate that there was an accidental fire.

17. The prosecution also produced copy of station diary at Exhibit 29. It indicates that the duty constable at Irwin Hospital informed the P.S.O> with regard to death of Manjulaben. The entry is made at 15:30 hrs. on 30/03/1995. The copy of F.I.R. produced at Exhibit 41 indicates that the offence was registered against the appellant at 2:45 a.m. on 13/03/1995.

18. In view of above, the prosecution proved beyond reasonable doubt that deceased Manjulaben had sustained homicidal injuries and she gave her statement with regard to cause of her death. The medical evidence adduced by the prosecution also indicates that Manjulaben was in fit state of mind, conscious and oriented to give her statement. The dying declaration also indicates that true account of the injuries and cause of death were given by the declarant. The defence has not been able to demonstrate that the dying declaration is not reliable or trustworthy. In view of this, we do not find any infirmity in the dying declaration. Therefore, learned trial judge was justified in relying upon the dying declaration to convict the appellant.

19. The prosecution also produced F.S.L. report at Exhibit 10, which indicates that the piece of cloth recovered from the place of incident was having residue of kerosene. Therefore, it becomes clear that the deceased was set ablazed by pouring kerosene over her body.

20. On overall assessment of the evidence in our view, on account of dispute between Manjulaben and appellant, Manjulaben left her matrimonial house. Thereafter, the appellant persuaded her to return to her matrimonial house and after her return, the appellant set her on fire by pouring kerosene over her and on account of burn injuries, Manjulaben died. Therefore, in our view, the prosecution proved the charge beyond reasonable doubt by unbroken chain of evidence and no interference is warranted in the impugned judgment.

21. In view of above, the appeal fails and stands dismissed. The judgment and order of conviction passed by the Additional Sessions Judge, Junagadh in Sessions Case No.143 of 1995 on 14th August 1997 convicting the appellant under Section 302 and 498 (A) of Indian Penal Code, is confirmed. Muddamal be disposed of as directed by the trial Court.

(A.L. DAVE, J.)

(BANKIM N.MEHTA, J.)

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